

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 2365 of 1999

For Approval and Signature:

HONOURABLE MR. JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may
be allowed to see the judgment ?

2 To be referred to the Reporter or not
?

3 Whether their Lordships wish to see
the fair copy of the judgment ?

Whether this case involves a
substantial question of law as to the
4 interpretation of the constitution of
India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the
civil judge ?

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SAHKARI MAHILA UDYOG MANDLI LIMITED - Petitioner(s)

Versus

**MANAGER (K. V. C. I.) AND DIST. REGISTRAR & 4 -
Respondent(s)**

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Appearance :

MR TS NANAVALI for Petitioner(s) : 1,

MS MANISHA L SHAH AGP for Respondent(s) : 1 - 5.

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CORAM : HONOURABLE MR. JUSTICE AKIL KURESHI

Date : 04/10/2006

ORAL JUDGMENT

1. In this petition, the petitioner who is a Cooperative Society of Women has challenged an order dated 20th December, 1997, passed by respondent no.1 as upheld by an order dated 4th September 1998 passed by respondent no.2 in appeal and passed by respondent no.3 on 12th January, 1999 in a Revision Application filed by the petitioner.

2. In the nutshell issues pertain to an order of liquidation passed against the petitioner society in exercise of powers u/s.107 of Gujarat Cooperative Societies Act (hereinafter referred to as the said Act).

3. A show cause notice dated 1/7/1997 came to be issued against the petitioner calling upon the petitioner to show cause why for certain alleged irregularities order of liquidation should not be passed. The petitioner replied to the show cause notice. The authorities however, did not find the reply acceptable and eventually passed an order of liquidation on 4/9/1998 further appeal and revision

filed by the petitioner also failed. The petitioner has, therefore, filed this petition challenging these orders.

4. In the petition, the petitioner has made several averments with respect to procedural as well as other illegalities committed by the respondents in passing the said orders. The petitioner has also sought to build a case of factual as well as legal malafides.

4.1. Respondents however, refused these allegations and a rebuttal affidavit is also filed.

4.2. In view of the conclusion that I am about to record, I do not find it necessary to adjudicate all these issues.

5. It may be noted that this Court had stayed the impugned orders at the outset while issuing notice on 5/4/1999. The stay was continued from time to time and eventually the same was extended till further orders on 22nd March, 2000. On 26/7/2000, the petition was admitted. Thus, stay against the impugned orders

of liquidation of the petitioner society continued through out the pendency of the petition. In other words, right from April, 1999, the petitioner society is protected against the implementation of the liquidation order.

6. From the show cause notice dated 1/7/1997 and the orders under challenge which are based on this show cause notice, it may be seen that main thrust of the authorities for passing the order of liquidation is regarding the financial condition of the petitioner society. Though there are some procedural defects also pointed out, it is doubtful whether in isolation such grounds would be sufficient to permit the authorities to liquidate the society. In effect, therefore, the liquidation orders are based on the perception of the Government and its authorities about the financial condition of the society at the relevant time.

7. More than seven years have passed since this Court stayed implementation of the order of liquidation. Learned advocate for the petitioner

submitted that under protection of the Court, the petitioner society continued its activities and presently also it is functional. Learned Asst. Government Pleader however has contrary instructions. She stated that as per the information of the Government petitioner society is currently not operational.

8. Be that as it may, I find that in peculiar facts of this case, at this passage of time when the Court had for more than seven years stayed the order of liquidation, it would not be appropriate to permit the Government to operate such an order of liquidation. The desirability of liquidating the petitioner society needs to be judged on the basis of current situation. If on the basis of condition as is prevailing currently, respondents find that the petitioner society is required to be liquidated, it would be open for the authorities to pass an appropriate order in accordance with law after following due process. However, in facts of the present case, it would not be possible to permit the Government to operate the order of liquidation at

this distant point of time when this Court had stayed the same through out pendency of the petition. In view of the above observations and directions, the petition is disposed of. However, leaving the liberty open to the Government to pass fresh orders in accordance with law if on the basis of present situation an order u/s. 107 of the said Act is found necessary.

9. With these observations and directions, petition is disposed of. Rule is made absolute to the above extent. No costs.

(Akil Kureshi, J.)

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